

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 984 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SURYODAY MITHA UTPADAK SAHAKARI MANDLI LTD.

Appearance:

GOVERNMENT PLEADER for Petitioner
MR DM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/09/97

ORAL JUDGEMENT

1. In this CRA filed under section 115 CPC Sarvoday Salt Producers Cooperative Society Ltd instituted Civil Suit No.875/92 in the court of Civil Judge (SD) at Rajkot and applied for temporary injunction by application Exh.5 to the effect that the order passed by the Collector, Rajkot, dated 25th June, 1992 should not be implemented

and the land which was allotted by way of lease to the plaintiff at Lavanpur admeasuring 200 acres should not be taken from their possession during the pendency of the suit. It appears that the State of Gujarat appeared and filed its reply at Exh.11 and produced various documents along with list at Exh.12. The trial court after considering the pleadings of the parties and the documents produced at that stage came to conclusion that the plaintiff has failed to prove prima facie case and that balance of convenience was also not in favour of the plaintiff. It also found that if the injunction as prayed for was granted irreparable loss will be caused to the State Government which can not be compensated in terms of money. It appears that plaintiff was granted land in question by the Collector, Rajkot which was admeasuring 200 acres vide order dated August 1, 1971 till July 31, 1991 on terms and conditions stated in the order for the purpose of manufacturing salt as the land was situated at Malia Miyana, Tal.Lavanpur. It appears that the further case of the society was that thereafter it purchased tractors, engines and it also constructed certain quarters for the employees and got electricity connection also for a period of 20 years and simply tried to develop the leasehold land but did not commence manufacture of salt. The cooperative Society also stated that before the expiry of period of 20 years it has once again addressed letter to extend the period of 20 years to further 20 years so that the work of manufacture of sale could be commenced. However, the plot of land was got inspected by the Collector, Rajkot and it was found that even the land was encroached upon by the members of the said society and that instead of old members new members were enrolled. The Collector, therefore, rejected the application for renewal of the lease for a further period of 20 years and the case of the plaintiff was that the said order could not have been passed without hearing the plaintiff. It was under these circumstances, that the trial court found that no case was made out for the purpose of grant of temporary injunction and by judgment and order, dated 30.8.93 it has dismissed the application for temporary injunction.

2. Being aggrieved thereby the plaintiff preferred Civil Miscellaneous Appeal No.156/93 in the Court of District Judge, Rajkot and 4th Extra Assistant Judge, Rajkot by judgment and order dated 23.11.1993 allowed the appeal and quashed the order passed by the trial court below Exh.5 on 30.8.93 and granted temporary injunction in terms of para 13(1) till the disposal of suit thereby renewing the lease for a further period of 20 years which

in my opinion is not its function at all. The Ld.4th Extra Assistant Judge not only exceeded his jurisdiction in exercising the power under Order 43 Rule 1(r) but in fact substituted the original agreement subject to which the lease was granted to the plaintiff and the plaintiff having failed to carry out any terms and conditions of the lease deed was rightly held to be not entitled to renewal of lease because the plaintiff-society has failed to produce the salt within a period of 20 years. Unfortunately, the Ld.4th Extra Assistant Judge applied the principle of triable issues but forgot the provisions of Order 39 Rules 1 & 2 of C.P.Code. In fact, he was required to focus his mind as to the fact whether any prima facie case existed in favour of plaintiff which has committed total breach of terms and conditions of the original lease which was granted for the purpose of manufacturing salt. He also forgot to see that not only the salt was manufactured during the period of 20 years but unauthorized encroachment was also made on the land and it was under the circumstances that there was no question of granting any injunction in favour of plaintiff. The 4th Extra Assistant Judge, Rajkot thus totally exceeded his jurisdiction and exercised the jurisdiction which was not vested in him by law. Mr.D.M.Thakkar, appearing for the respondent-plaintiff has invited the attention of this court to the order passed by the Collector, Rajkot dated 25th June, 1992 whereby he rejected the application of the respondent-society for renewal of lease for the purpose of production of salt. In the said order he has stated that pursuant to the application of the society dated 3rd January, 1992 to renew the lease of the land admeasuring 200 acres which was granted for the purpose of production of salt on enquiry it was found that --

- (i) the said society has committed encroachment on the land which was meant for the road;
- (ii) the members of the society were found not to be manufacturing salt but the work of manufacturing salt is given to someother contractor;
- (iii) all the old members of the society are replaced by the new members who are inducted as members subsequently;
- (iv) most of the members of the society who are inducted are found to be the members beyond the working functions of the society; and
- (v) the main members and promoters of the society

have objected to the renewal of lease.

3. In view of the aforesaid five reasons the Collector, Rajkot has rejected the application of the aforesaid society for renewal of the lease for further period of 20 years. In fact, the main purpose of granting lease to the cooperative society for the purpose of manufacturing salt is to see that the members of the society benefit thereby and they have living maintenance by manufacturing salt and instead society inducted a subcontractor for the purpose of manufacturing salt and all the members of the society are replaced by new members and when the old members and workers of the society have objected to the renewal of the lease, in my opinion, the Collector was justified in not renewing the lease for further period of 20 years. However, Mr.D.M.Thakkar, Id.advocate for the society was at pains to point out to the court that in fact before passing the said order not renewing the lease the Collector, Rajkot was required to atleast give hearing and /or comply with the rules of natural justice, vis-a-vis, the members of the society. In my opinion, the contention is not well-founded, more particularly, when all the old members of the society are replaced by the new members and the old members of the society have specifically objected to renewal of the lease . In fact, the Apex Court has in the case of M/S RADHAKRISHNA AGARWAL vs STATE OF BIHAR reported in AIR 1977 SC 1496 taken the view that when there is a clear breach of any covenant or terms and conditions of the contract and when the lease is apparently liable to be terminated for such breach, it is not necessary to give any opportunity to be heard to the lessee before passing any order of cancellation of lease. In the aforesaid case it was a question of cancellation of lease, but in the present case the question is one of renewal of lease and the Collector, Rajkot has not renewed the lease for the reasons which are specifically set out. In fact, it is found by the Collector that the members of the cooperative society have totally failed to manufacture salt and the work of manufacturing of salt is given to someother party on sub-contract basis. He has also found that the promoters and the original members of the society had objected against the renewal of lease. In view of the aforesaid, in my opinion, the Collector, Rajkot was absolutely justified in law in not renewing the lease because the very purpose of granting lease was to provide source of maintenance to the original members of the society. It is a fact that someother members are inducted as members. Secondly, it is found that in fact the members are not undertaking the work of manufacturing

salt and subcontractor is employed who is undertaking the work of manufacturing salt. In such a situation, the order which was passed by the Collector was just and proper and there was no need of providing opportunity of being heard because the original members of the society and the promoters of the society have objected to the renewal of lease. The factum of subcontractor having been employed for the purpose of manufacturing salt is so glaring and the trial court took that fact into consideration. The appellate court unfortunately was led away by the factors which were not relevant and material to the exercise of power under Order 43 Rule 1(r) of CPC. The appellate court unfortunately assumed the jurisdiction of exercising the original appellate power as if it was deciding the appeal under section 96 CPC Appellate court also assumed to itself the power of renewal of the lease which in fact never vested in the appellate court and by granting injunction the appellate court in fact renewed the lease which was in fact not the function of the appellate court. In that view of the matter I do not find any substance in any of the submissions made by Mr.D.M.Thakkar, Ld.advocate for society, and therefore the judgment and order passed by the Ld.4th Extra Assistant Judge in Civil Misc.Appeal No.156/93 is hereby quashed and the judgment and order of the trial court being the Court of Civil Judge (SD) is restored. In the result, CRA succeeds. Rule is made absolute accordingly. No costs.

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